

Washington University Law Review

Volume 26 | Issue 3

January 1941

Constitutional Law—Power of President to Remove Administrative Officers—Effect of Statutory Limitations

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Recommended Citation

Constitutional Law—Power of President to Remove Administrative Officers—Effect of Statutory Limitations, 26 WASH. U. L. Q. 424 (1941).

Available at: https://openscholarship.wustl.edu/law_lawreview/vol26/iss3/19

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rights of members of a class will not conclude an individual as to issues personal to him.¹⁷ Mere allegation that the suit is brought in behalf of all will not withstand the defense of non-joinder.¹⁸ In all these imperfect, "quasi-class" actions, a failure to join all parties is a failure of due process as to those not joined if it is sought to assert against them the decree or the findings of fact and law supporting it.¹⁹

Analytically, it would seem that the representative status of plaintiff in the previous action on the agreement involved in the instant case was at best dubious, owing to the uncertain character of the class he purported to represent. If he represented all the signing landowners, he was in the anomalous position of representing the very defendant whom he sued. If he represented only those signers interested in enforcing the agreement, it cannot with certainty be said that the class included the instant defendant's grantor, who now asserts a contrary interest. Moreover, the constituency of such a class at any given moment would be well-nigh indeterminable, and would be subject to change without notice, at the whim of the individual owners.²⁰ Such shifting sands are hardly a suitable foundation for a holding that defendant was precluded by representation from an effective litigation of the contested issue. This is the more true because the issue was previously disposed of by stipulation between the parties. Since it cannot with certainty be said that defendant's grantor was legally represented in the previous action, defendant is entitled under the due process clause of the Fourteenth Amendment to a fair hearing on the issues necessary to sustain his position.

R. T. S.

CONSTITUTIONAL LAW—POWER OF PRESIDENT TO REMOVE ADMINISTRATIVE OFFICERS—EFFECT OF STATUTORY LIMITATIONS—[Federal].—The act which established the Tennessee Valley Authority¹ provides that the President may remove directors if they appoint employees on a political basis. The President removed the petitioner solely because he felt it was in the best interest of the administration of the Authority. Petitioner sued for back salary, alleging that the methods and grounds specified by the act are exclusive. *Held*: The President has inherent power to remove an executive officer appointed by him, even though the officer was appointed for a fixed

17. *Coe v. Armour Fertilizer Works* (1915) 237 U. S. 413.

18. *Wabash R. R. v. Adelbert College* (1908) 208 U. S. 38.

19. See cases cited *supra* notes 13, 14, 15, 16, 17.

20. In *Lee v. Hansberry* (1939) 372 Ill. 369, 379-380, Shaw, J., said: "There could be no certainty nor even any probability that they all would agree on a course of conduct to be followed at any particular time or under any particular circumstances. There was no common right nor any common fund, nor any common or undivided *res* to be dealt with, and certainly no one ever had any right or power to speak for any one but himself."

The conclusion of the foregoing quotation is founded upon the consideration that each property owner owned his land in severalty, his obligation under the agreement was several, and he might or might not wish to enforce or contest the validity of the agreement.

1. Tennessee Valley Authority Act (1933) 48 Stat. 58, c. 32, 16 U. S. C. A. (Supp. 1940) secs. 831-831dd.

term and even though the act creating the office provides for removal by stated methods and for specific reasons. *Morgan v. Tennessee Valley Authority*.²

The Constitution does not expressly confer on the President the power to remove officials, but it has long been established that the power to remove, in the absence of statutory provision to the contrary, is an incident of the power to appoint.³ Unless a person is appointed by the President, by one of the courts of justice, or by the head of a department so authorized by law, he is an inferior officer and may be removed at will by the person appointing him, except where Congress provides otherwise.⁴ In *Shurtleff v. United States* it was held that specification by Congress of certain causes for which an appraiser of merchandise might be removed should not be construed as declaring that the President might not remove the appointee for such other causes as he thinks sufficient.⁵ The case of *Myers v. United States*,⁶ which involved the removal of a postmaster of the first class, squarely presented the question whether the President was constitutionally invested with a power of removal which could not be limited by Congress. In this case the Court held that the executive power, vested by the Constitution in the President of the United States, extended to the removal without the consent of the Senate of executive officers appointed by him with such consent. To be distinguished from the *Myers* case is the case of *Humphrey's Executor v. United States*,⁷ which involved the removal of a Federal Trade Commissioner. This case limited the *Myers* case by holding that, where the function of the official is "quasi-judicial" and "quasi-legislative," the President's power of removal is restricted to the specific causes enumerated in the statute.

There is a difference between the administrative agency involved in the instant case and the agency involved in the *Humphrey* case. The Tennessee Valley Authority exercises mainly executive functions, whereas the Federal Trade Commission exercises mainly "quasi-judicial" functions and some "quasi-legislative" functions.⁸ However, it does not follow that, because the functions of the Tennessee Valley Authority are executive in the main, the instant case is on all fours with the rule of the *Myers* case. The court

2. (C. C. A. 6, 1940) 115 F. (2d) 990.

3. *Ex parte Hennen* (U. S. 1839) 13 Pet. 225; *Blake v. United States* (1880) 103 U. S. 227; *United States v. Allred* (1895) 155 U. S. 591; *Keim v. United States* (1900) 177 U. S. 290; *Reagan v. United States* (1901) 182 U. S. 419; *Shurtleff v. United States* (1903) 189 U. S. 311; *Burnap v. United States* (1920) 252 U. S. 512.

4. *United States v. Mouat* (1888) 124 U. S. 303; *United States v. Smith* (1888) 124 U. S. 525; *Lamar v. United States* (1916) 240 U. S. 60.

5. (1903) 189 U. S. 311.

6. (1926) 272 U. S. 52.

7. (1935) 295 U. S. 602.

8. The powers of the Federal Trade Commission are intended directly to affect private interests. Federal Trade Commission Act (1914) 38 Stat. 717, c. 311, 15 U. S. C. A. (1927) secs. 41-42. On the other hand, the Tennessee Valley Authority concerns itself mainly with public interests, such as the operation of dams, the promotion of navigation, and the generation and sale of electricity.

itself recognized this.⁹ In the *Myers* case, a postmaster of the first class was appointed for a term of four years with no other qualifications on his removal,¹⁰ while removal of the director of the Tennessee Valley Authority was qualified by an enumeration of specific bases for action by Congress and the President.¹¹ Thus, while the only specified ground of removal in the *Myers* case was the expiration of the official's term, the officer in the instant case was, in addition, subject to removal in a specific way and for a specific cause.

From a comparison of the cases, it seems that an officer whose duties are mainly executive may be removed at any time by the President, no matter what qualifications be placed by Congress on the removal of that officer.

J. E.

CONTRACTS—LEGALITY OF CONTRACTS FOR LOBBYING SERVICES—[Federal]. Plaintiff sued in contract to recover for services rendered in lobbying for a bill which Congress eventually enacted. Plaintiff, who had been paid \$500 per month for his expenses and services, sued for an additional \$10,000 which he claimed as additional compensation agreed upon by defendant in event of his success in securing the enactment of the bill. Defendant denied liability on the ground that the contract was illegal. It was proved that plaintiff had used his personal influence with certain legislators, and had promised certain Senators that he would exert political influence for them in their home states. *Held*, that the contract was a lobbying contract and was, therefore, unenforceable. *Ewing v. National Airport Corp.*¹

The courts have said that lobbying contracts are invalid if they have the slightest tendency to induce acts injurious to the public interest or welfare. To be held void, it is not necessary that the contract stipulate for corrupt or immoral action, such as bribery.² The evil seems to lie in the secrecy of private solicitation intended to influence action on the part of a legislator in a manner and at a time that makes it impossible for opposing views to be presented.³ A contract to pay for such services is void.⁴ This

9. The court said, "between what was decided in the *Humphrey* case, and what was held in the *Myers* case, there still remains a field of doubt, and * * * cases falling within it must be left for future consideration and determination as they arise." *Morgan v. Tennessee Valley Authority* (C. C. A. 6, 1940) 115 F. (2d) 990, 992.

10. Act of July 12, (1876) 19 Stat. 78, 80, c. 179, 39 U. S. C. A. (1928) sec. 31.

11. See Tennessee Valley Authority Act (1933) 48 Stat. 60, 63, c. 32, 16 U. S. C. A. (Supp. 1940) secs. 831c, 831e. These sections provide that the directors may be removed (1) by a concurrent resolution of the Senate and the House of Representatives, (2) by the President for violation of the provision prohibiting appointment of employees on the basis of their political affiliation.

1. (C. C. A. 4, 1940) 115 F. (2d) 859.

2. *Adams v. East Boston Co.* (1920) 236 Mass. 121, 127 N. E. 628.

3. 1 Cooley, *Constitutional Limitations* (8th ed. 1927) 281.

4. *Providence Tool Co. v. Norris* (U. S. 1864) 2 Wall. 45; *Trist v. Child* (U. S. 1874) 21 Wall. 441; *Marshall v. B. & O. Ry.* (U. S. 1853) 16 How.